

REMARKS

Claims 1-11, 13-34 and 41-52 are in this application and are presented for consideration. By this amendment, Applicant has amended claims 1-11, 13-34 and 41-45. Claim 12 has been canceled. Applicant has also canceled claims 35 - 40 subject to Applicant's right to file a divisional application for the features found in these claims. New claims 46-52 have been added.

The drawings have been objected to under 37 CFR 1.83(a) because the Office Action states that the fixed guides, the mobile guides and the sliding shoes are not shown in the drawings.

Applicant has canceled claim 12, which includes the feature of the fixed guides. The mobile guides are clearly designated with reference character "39" and the sliding shoes are shown with reference character "3F" (see Figures 4, 7 and 8-11). Accordingly, Applicant respectfully requests that the Examiner remove the objection to the drawings.

Claims 1-17, 21-28 and 41-44 have been rejected under 35 U.S.C. 102(b) as being anticipated by Skotnikov et al. (U.S. 5,526,705).

The present invention relates to an erythrocyte sedimentation rate measuring device for blood samples. The device includes at least two detectors and agitating devices. The agitating devices rotate holders that hold test tubes containing biological fluids, such as blood. The two detectors measure the level of the fluid in the test tubes. A control unit can advantageously determine an erythrocyte sedimentation rate of the fluids based on the levels of the fluid detected by the two detectors. This advantageously does produce any liquid or solid waste

since separate tubes do not have to be used to draw a sample of the blood to determine the erythrocyte sedimentation rate. The prior art as a whole fails to teach and fails to suggest such features or such waste saving advantages.

Skotnikov et al. discloses an apparatus that analyzes a plurality of soil samples to determine characteristics of the soil samples. An input portion sequentially provides a plurality of soil samples each having a known solid content. A plurality of vessels are supported for movement with a continuous conveyor relative to the input portion to receive the soil samples. A plurality of testing stations are arranged relative to the continuous conveyor to sequentially access the samples carried by the vessels. The testing stations each test the samples to determine at least one of the characteristics of the samples.

Skotnikov et al. fails to teach and fails to suggest the combination of a first detector and a second detector that detect levels of fluid in test tubes in holders after the fluid is shaken by agitating devices. According to the present invention, the first detector and the second detector are spaced apart from each other via a sedimentation area and a control unit determines an erythrocyte sedimentation rate of the fluid based on the levels detected by the two detectors. At most, Skotnikov et al. discloses testing stations that test soil samples to determine at least one of the characteristics of the samples. However, Skotnikov et al. does not provide any teaching or suggestion for any of the testing stations measuring a level of fluid in a test tube that is held by a holder as claimed. The Office Action takes the position that reference numeral 78 of Skotnikov et al. is the equivalent of the detector of the present invention. Applicant respectfully disagrees as reference numeral 78 of Skotnikov et al. relates to an automated

photo-electric calorimeter 78. The calorimeter 78 of Skotnikov et al. only measures the heat created during a reaction and does not measure a level of a fluid in a test tube as claimed. The detection of the level of fluid in the test tubes is a significant feature of the present invention because the erythrocyte sedimentation rate is determined based on the detected levels of the fluid. Skotnikov et al. fails to disclose such erythrocyte sedimentation rate determining features. In fact, Skotnikov et al. does not teach or suggest any measuring arrangement based on detection of levels measured at two positions spaced apart from one another by a sedimentation area as claimed. Skotnikov et al. only discloses that tests are performed at various testing stations, but Skotnikov et al. does not teach or suggest a sedimentation rate that is calculated by comparing data detected at two sequentially arranged spaced apart detection stations as featured in the present invention. As such, the prior art as a whole does not teach or suggest important features of the claimed combination. Accordingly, Applicant respectfully requests that the Examiner favorably consider claim 1 as now presented and all claims that depend thereon.

Skotnikov et al. does not teach or suggest the combination of agitating devices that move containers out of a plane where the flexible member is arranged. The Office Action takes the position that Skotnikov et al. discloses such features. Applicant respectfully disagrees. Skotnikov et al. discloses that the containers are moved along a horizontal plane where the flexible chain is arranged and rests. There is no oscillation of the containers of Skotnikov et al. out of the plane. The mixing devices of Skotnikov et al. are introduced into the container and the content of the container is stirred. However, the container of Skotnikov

et al. is not oscillated or moved to stir the contents thereof as claimed. According to the present invention, the holders are rotated about a substantially horizontal axis such that the fluids in the test tubes are stirred or mixed by the rotation of the test tubes. Skotnikov et al. does not achieve stirring by oscillating the vessels as claimed. In contrast to the present invention, the vessels of Skotnikov et al. are kept stationary and a stirrer is introduced into the vessels to stir the contents contained therein. In fact, Skotnikov et al. does not teach or suggest agitating devices that include guides. The Office Action takes the position that sprockets 140 of Skotnikov et al. are the equivalent of the guides of the present invention. Applicant respectfully disagrees since the sprockets 140 of Skotnikov et al. are used to turn the vessels around the curves of the flexible member, but the sprockets 140 are not a part of the agitating means and do not perform any agitation action as claimed. As such, the prior art as a whole takes a completely different approach and fails to teach or suggest each and every feature of the claimed combination. Accordingly, Applicant respectfully requests that the Examiner favorably consider claims 7-9 as now presented.

Claims 18-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Kaarakainen et al. (U.S. 6,520,313). Claims 29, 30 and 32-34 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Coulter et al. (U.S. 4,609,017). Claim 31 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Skotnikov et al. in view of Coulter et al. and in further view of Roginski (U.S. 4,927,545).

All of these rejections are based on the interpretation of Skotnikov et al. as teaching the

a control unit that determines an erythrocyte sedimentation rate based on levels of fluid detected by two detectors. A fair reading of the Skotnikov et al. reference indicates that the Skotnikov et al. reference discloses performing different analyses at various stations, but none of the stations determine an erythrocyte sedimentation rate as claimed. The references as a whole clearly do not direct a person of ordinary skill in the art towards the invention as claimed. Accordingly, reconsideration of these rejections is requested.

Applicant has added new claims 46-52. New independent claims 48 and 51 provides for features similar to those found in claim 1, but in different claim language. New claims 48 and 51 highlight that the agitating devices rotate the holders to mix the fluids in the test tubes. New dependent claims 46, 47, 49, 50 and 52 have been added to further clarify the features of the invention. Applicant respectfully requests that the Examiner favorably consider new claims 46-52.

Favorable consideration on the merits is requested.

Respectfully submitted
for Applicant,

A handwritten signature in black ink, appearing to read 'J. McGlew', with a stylized flourish at the end.

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Attached: Petition for One Month Extension of Time

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